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October 17, 1997

**BY HAND DELIVERY**

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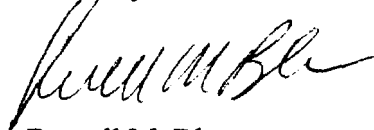
Re: Comments of Sprint Spectrum L.P., d/b/a Sprint PCS,  
CC Docket Nos. 96-45 and 97-160

Dear Ms. Todd:

Enclosed please find one copy and a diskette copy of the Comments of Sprint Spectrum L.P., d/b/a Sprint PCS, in the above-captioned proceeding. These comments are submitted in response to Part IV of the FCC's July 18, 1997 Further Notice of Proposed Rulemaking in this proceeding.

If you have any questions regarding this filing, please contact me at (202) 424-7835.

Sincerely,



Russell M. Blau

Before the  
**Federal Communications Commission**  
Washington, D.C. 20054

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OFFICE OF THE SECRETARY

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

Forward-Looking Mechanism )  
for High Cost Support for )  
Non-Rural LECs )

CC Docket No. 96-45

CC Docket No. 97-160

**Comments of Sprint Spectrum L.P.  
d/b/a Sprint PCS**

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Dated: October 17, 1997

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**Before the  
Federal Communications Commission  
Washington, D.C. 20054**

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	)	
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Non-rural LECs	)	CC Docket No. 97-160

**Comments of Sprint Spectrum L.P. d/b/a/ Sprint PCS**

**Introduction**

Sprint Spectrum L.P., doing business as Sprint PCS, by undersigned counsel and pursuant to Part IV of the Further Notice of Proposed Rulemaking ("FNPRM") issued in the above-captioned docket,<sup>1</sup> hereby submits these Comments on the proposed level of local usage that should be included in the definition of universal service.

In the FNPRM, the Federal Communications Commission ("FCC" or "Commission") seeks comment on its tentative conclusion that a local usage component should be included in the definition of universal service. The FCC proposes such a component in part because failing to do so would "create a bias in favor of carriers (such as wireless carriers) that provide service with facilities that allow relatively inexpensive access to the network but that have higher usage costs."<sup>2</sup>

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<sup>1</sup> *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45 and 97-160, Further Notice of Proposed Rulemaking (released July 18, 1997) ("FNPRM").

<sup>2</sup> FNPRM at ¶ 178.

The FCC seeks comment on proposals to base such a requirement on either the number of minutes per month used by the average customer subscribing to flat-rate local service or the product of the average number of calls that are included in wireline carriers' measured-rate service and the average call length.<sup>3</sup>

Sprint PCS submits that both suggested approaches suffer from the same fundamental flaw -- undue reliance on historic wireline data. Such reliance excludes consideration of cost and other factors particular to different technologies, including wireless service. Specifically, due to different cost structures and pricing mechanisms, American consumers currently utilize landline phones to a greater extent than wireless services. Because most wireline local service is provided in a flat rate package that allows for unlimited outgoing and incoming calls, as well as calls of any duration, the average number of minutes consumers spend on landline phones is significantly higher than the time they spend on wireless phones. Simply put, consumers using their wireline phones are generally not conscious of the amount of time they spend on their phones because the average length of a local call usually does not affect the price of their monthly phone service. Since wireless carriers currently charge consumers by minute of use, not surprisingly, the average number of minutes spent on a wireless call is significantly less than wireline usage.<sup>4</sup>

Any attempt to conform usage patterns for these two very distinct technologies will only serve to skew the standard in favor of entrenched wireline providers. As cost structures exist today, wireless carriers cannot -- and indeed, should not -- be compelled to provide service based on a

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<sup>3</sup> *Id.* at ¶ 179.

<sup>4</sup> *See, e.g.*, CTIA's Semi-Annual Data Survey Results, Dec. 1996. This survey can be found at CTIA's web site, <http://www.wow-com.com/professional/reference/graphs/gdtable.cfm>.

wireline model. Thus, if the FCC adopts a local usage requirement based solely on data from existing wireline local service providers and customers, the ability of wireless carriers to participate fully in the universal service program would be significantly retarded. Accordingly, Sprint PCS urges the FCC to adopt a separate local usage requirement for wireless and wireline carriers seeking eligibility for universal service funding. A distinct local usage component for each technology more accurately reflects the significant differences between wireline and wireless service and will enhance the prospect of wireless services becoming available to consumers in rural and high cost areas.

**I. The Commission's Universal Service Policies Should Encourage Competition By Wireless Service Providers In Rural and High-Cost Areas**

Sprint PCS is currently serving 75 metropolitan markets covering more than 500 cities. As Sprint PCS extends its nationwide network and service coverage area, the company is actively seeking certification as an eligible telecommunications carrier in several states for the purpose of participating in the federal universal service program. By participating in the universal service program and drawing subsidies from the Universal Service Fund, Sprint PCS hopes to serve *all* consumers within its license territories, including those in rural and high cost areas that traditional local exchange carriers have always been reluctant to serve without subsidies.<sup>5</sup>

The potential contribution of wireless carriers such as Sprint PCS in providing telecommunications service to consumers in rural and high cost areas is substantial. Wireless providers offer a wide array of service options that might not otherwise be available to consumers

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<sup>5</sup> Sprint PCS is currently in the early stages of deploying its network, and therefore is not currently able to serve all consumers within its license areas. Deployment of PCS facilities throughout the license area will depend on economic feasibility, including Sprint PCS's eligibility for universal service funds where applicable.

in these areas. Most significantly, Sprint PCS and other wireless providers offer consumers the benefit of mobility. Moreover, Sprint PCS in most instances offers the consumer a much larger local calling area within which calls are considered “local” (*i.e.*, non-toll) than the local service area designated by incumbent local exchange carriers.<sup>6</sup> As a result, Sprint PCS customers not only can take their phones with them, but they can reach a broader geographic area without paying toll charges. In addition, as part of its basic service offering, Sprint PCS provides customers with voice mail, caller ID, call waiting and three-way calling.

Encouraging wireless entry into high cost and rural areas is consistent with Section 254(b)(3) of the Communications Act. As Section 254(b)(3) stipulates, “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>7</sup> Consistent with this goal, Sprint PCS hopes to provide rural and high cost consumers with access to telecommunications services that are “reasonably comparable” to (indeed, identical to) service offered in urban areas.

Notwithstanding the very tangible benefits of wireless service to the universal service program, and, more importantly, to consumers in high cost and rural areas, this proceeding could significantly inhibit the ability of wireless carriers like Sprint PCS to enter high cost areas and

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<sup>6</sup> Typically, incumbent LECs offer very limited local calling scopes to their rural customers, in contrast to the broader calling scopes available in many urban areas. By contrast, Sprint PCS offers the same local calling scope to all of its customers in a particular service area.

<sup>7</sup> 47 U.S.C. § 254(b)(3).

compete effectively with wireline carriers. Specifically, if wireless providers are unable to obtain the same universal service subsidies available to their wireline competitors -- to defray the expense of investing in high cost areas -- wireless carriers will be less likely to extend service offerings to such areas. Wireline carriers will enjoy an unfair competitive advantage; that is, they will be able to offer lower prices for services in high cost areas not due to any superior efficiency or skill, but solely due to their receipt of subsidies. As a result, consumers will be deprived of the wide array of services offered by wireless technology, and the Act's goal of promoting competition will be frustrated.

**II. A Uniform Local Usage Requirement Based on Wireline Usage Is Not Necessary to Protect Consumers; Instead, the Options of Those Consumers Would Unnecessarily Be Restricted**

In the FNPRM, the FCC tentatively concluded that a local usage component should be imposed to ensure that consumers "realize the benefits of universal service support even if they cannot afford high per-minute charges."<sup>8</sup> Sprint PCS submits that the relationship between affordable service and a local usage component is tenuous. As the Joint Board explicitly recognized, price is not the sole measure of affordability.<sup>9</sup> Instead, factors such as calling area size, income levels, the cost of living, population density and other socio-economic indicators may affect affordability.<sup>10</sup> For example, incumbent LECs typically have limited their rural customers to very

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<sup>8</sup> FNPRM at ¶ 178.

<sup>9</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd. 87, ¶¶ 126-128 (1996).

<sup>10</sup> *Id.* Even if the price of service were the only determinant of affordability, which is not the case, state rate regulation would ensure that service is affordable to consumers. See 47 U.S.C. § 332(c)(3)(A)(i) (states can petition the FCC for authority to regulate wireless rates where "market



small toll-free calling areas (even though urban customers often enjoy unlimited calling throughout a metropolitan area), thereby reducing the value of unlimited calling in these areas. The Commission's proposals, which simply consider the number of "local" minutes available to a customer without considering the scope of the local calling area, would ignore the substantially greater value provided to consumers by the large local calling areas offered by Sprint PCS and many other wireless carriers, and therefore would create a competitive imbalance.

Although Sprint PCS is not opposed in principle to a local usage component, if the Commission adopts a minimum number of minutes requirement based on wireline standards, wireless carriers are less likely to provide service in high cost and rural areas. Without access to the universal service support available to wireline providers, the costs of providing wireless service to rural and high cost regions of the country will be prohibitive. Consumers will thus be disadvantaged by limited opportunities and a less diverse array of telecommunications options.<sup>11</sup> Moreover, although such features as mobility, voicemail and caller ID are not required elements of universal service, Sprint PCS provides such features as part of its basic service. Rural and high cost

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conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory").

<sup>11</sup> The notion of a local usage component implies that consumers living in rural and high cost areas are unable to choose which type of phone service best suits their needs. This assumption would have made sense in the old, monopoly market structure, but is a paternalistic anachronism in a competitive environment. Even if a local usage component was not required for a carrier to be eligible for universal service funds, it does not follow that a consumer will chose a wireless phone over a landline option. Presumably, a rational consumer will chose a phone that best suits his or her telecommunications requirements. If a wireless service provider is not offering an adequate amount of local use for a certain price, a consumer can always chose another phone service option. That is the essence of competition.

consumers should not be denied access to such features if they value such options more than unlimited local calling.

The Commission should also be aware that imposition of a uniform local usage requirement will have perverse consequences extending beyond the suppression of wireless competition in high-cost areas. Specifically, a uniform usage allowance will preclude both wireline and wireless carriers from offering optional usage-sensitive pricing plans with a small (or no) usage allowance to budget-minded low-usage customers. These customers will be forced to pay for usage they do not want or need, so that their carrier can qualify for universal service subsidies.

Thus, rather than protecting consumers, a local usage component that unduly relies on wireline data would limit consumer choice and restrict the availability of wireless services in rural and high-cost areas where the wide array of service options offered by wireless carriers might not otherwise be available. If wireless carriers are not able to serve rural and high-cost areas on a competitive basis due to technologically-biased subsidies, the result will be the lowest common denominator of telephone service -- basic landline service as it exists today. This view of universal service presents a stark contrast to the FCC's goal of providing consumers with the widest array of technologically available choices and options.

**III. A Local Usage Component Based on Wireline Standards Is Neither Competitively Nor Technologically Neutral and Is Inconsistent with the Goals of the 1996 Act and the Universal Service Order**

Imposition of a local usage requirement based on wireline usage is inconsistent with the principle of competitive neutrality adopted by the FCC in its Universal Service Order. As the FCC noted, “competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”<sup>12</sup> It is fairly obvious, however, that a uniform local usage requirement (especially one based on historic wireline data) would favor the technology with the lowest usage-related cost. The higher the usage allowance, the greater the advantage that would be conferred on one technology over the other.

In recent rate design decisions, the Commission has recognized costs differences among services and technologies. For example, in its Access Reform Order, the Commission based the Subscriber Line Charge for Primary Rate Interface ISDN services on an analysis of the cost of these services as compared to “Plain Old Telephone Service,” rather than adopting an arbitrary uniform pricing policy.<sup>13</sup> Here, similarly, the minimum required usage levels for universal service support should take account of cost differences between wireline and wireless usage.

The notion of establishing different usage requirements for wireless and wireline technology is consistent with the FCC’s decision not to impose equal access to interexchange carriers in the

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<sup>12</sup> *Id.* at ¶ 47.

<sup>13</sup> *Access Charge Reform*, CC Docket No. 92-262, First Report and Order, FCC 97-158 (rel. May 16, 1997) (“Access Reform Order”) at ¶¶ 115-119.

definition of universal service.<sup>14</sup> As the FCC has previously determined, statutory and policy considerations, including the statutory provisions which govern federal regulation of CMRS carriers, can preclude the FCC from imposing “symmetrical” service obligations on all eligible carriers.<sup>15</sup> The FCC commented that imposing such symmetrical service obligations would “undercut local competition and reduce consumer choice and, thus, would undermine one of Congress’ overriding goals in adopting the 1996 Act.” *Id.*

### **Conclusion**

For the foregoing reasons, the FCC should adopt a local usage requirement which clearly recognizes and takes into account the differences between wireline and wireless technology. Only by recognizing the differences in wireline and wireless technology will the FCC ensure that the local usage requirement is consistent with the requirements of Sections 214 and 254, the principle of competitive neutrality, and the pro-competitive goals of the 1996 Act.

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<sup>14</sup> Universal Service Order at ¶ 79.

<sup>15</sup> *Id.*

Respectfully submitted,



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Dated: October 17, 1997

**CERTIFICATE OF SERVICE- 96-45**

I hereby certify that on this 17th day of October, 1997, the foregoing Comments of Sprint Spectrum L.P., d/b/a Sprint PCS were served via hand delivery\* or first-class mail, postage prepaid, on the following:

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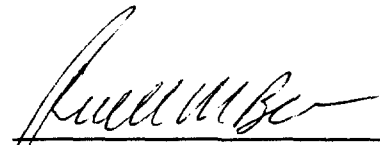


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